ARAB PROGRAM FOR HUMAN RIGHTS ACTIVISTS - APHRA
&
Coordination Committee for Civil Associations - C-C-C-A

For a Democratic Law on Public Associations

For Partnership... Against Tutelage

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Introduction..!!

This booklet is a collection of documents, texts, and research papers addressed to every good citizen, who defends the interests and aspirations of our homeland. These documents are very informative, as they present readers to all forms of arbitrariness and recalcitrance, which confront public initiatives and popular participation. It concludes that such irrational practices represent a step backward while the world has been witnessing magnificent and successive changes since the beginning of the third millenium.

The booklet represents a cry for the application of the Constitution's provisions and the international standards for human rights and basic freedoms against the narrow interests and the out-dated despotic mentality. The authorities' assertion of the importance of civil society organizations and popular participation in policy and decision-making means that the problem with public activity is that of implementation of principles – i.e. the promulgation of a just and democratic law to govern public activity.

Public activity and associations should not be obstructed. Restrictions imposed on finance and imprisonment for participation in a public association should be abolished. Transparency and social commitment are among the most important principles in public activity and the government should show its respect for public activity. Hence the cry of the Arab Program for Human Rights' Activists:

Raise your hands from public activity ...

We demand wider participation in the discussion of the new bill...

We want a more just and democratic law...

YES, for participation... NO, for subordination...!!!!

ARAB PROGRAM FOR HUMAN RIGHTS ACTIVISTS
Cairo , January 2001

Foreword

Role and public perception of non-governmental organizations, worldwide, have changed and matured tremendously during the past two decades. In most countries they are being perceived as helpful and qualified partners in a wide range of services for the society. Having started from single issues in poverty alleviation, basic health care or social work in practically all developing countries, they are now hundreds of thousands of professionally managed organizations providing low cost services for those who need them most. They employ dedicated and responsible, predominantly younger people who want to serve their countries and societies in a meaningful way. NGOs do contribute as well to the debates on public policy issues as a non-partisan discussion partner and, by doing so, very often bridge the natural gap between political parties and the citizens. Consequently, more and more governments have overcome their previous suspicions vis-à-vis the NGOs and use the opportunities of cooperation with them including the international donor community which has mobilized considerable public funding for this important part of development cooperation.

Egypt, like any other country, is trying to find its own way of organizing the relationship between state and civil society in the best interest of the Egyptian people. The pertinent legislation is still under discussion and supposed to be decided soon by the new parliament. This collection of basic arguments and texts on the NGO-Law debate by the Arab Program for the Human Rights Activists is being published as a constructive contribution to the discussion and a hopefully helpful tool for the decision-makers. This is why Friedrich Naumann Stiftung, the liberal political foundation from Germany, is pleased to contribute to this timely effort. May it help to improve the self-help capacity of the Egyptian people and their social fabric for the benefit of stable development and progress in the global competition.

Wolfgang Sachsenröder
Regional Director
Friedrich Naumann Foundation
Maghreb - Middle East & Mediterranean Office

Why we oppose the law???

Among the reasons for which Public associations oppose the law on associations, No.153/1999, is the absence of the provisions set to guarantee the freedom of public activity. After two years of painstaking effort and mutual discussions between civil society organizations, the ministry of social affairs and the formulation committee, the final draft passed by the People's Assembly was completely different. The draft includes many restrictions, making the principle of the freedom of public activity literary superfluous.

1) Article 2 refers would-be disputes between associations and the administration to the Court of Summary Justice. This provision contravenes with the stipulations of Egypt's Constitution, which refers such disputes to the Higher Administrative Court.

2) Article 3 prohibits non-governmental organizations to undertake public activity unless they operate, and are formed, under the umbrella of the law No.153/1999. The provision seeks to subordinate all forms of public activity in Egypt to the administration's control, with the numerous restrictions implied.

3) Article 6 sets as a condition for the formation of a non-government organization that the administration does not submit any objection against it within 60 days of notification. In effect, this strips the principle of notification, as opposed to license, of any meaning.

4) Article 8 allows the administrative department to object on some members or founders of an association, in contradiction with articles 40 and 55 of the Egyptian Constitution.

5) Article 11 includes five prohibitions on the activities of public associations in contradiction with Article 55 of the Constitution. The article's provision is also very elastic which allows for extremely wide interpretations, giving the administration extensive powers over public associations. Paragraph 3 of article 11 prohibits associations to undertake any political or trade union activity and restricts the practice of such activities to political parties and trade unions. This ban puts public associations under a permanent threat of dispersion given the difficulty of discriminating between the defense of public rights and freedoms from political activity. For any criticism of the government behavior in the context of defending public freedoms can be interpreted as a political activity, giving the administration enough reasons to dissolve an association.

6) While article 16 gives associations the right to join international federations, it sets the approval of the administration (or non-objection within 60 days) as a prior condition for this. This means that the authorities adopt the procedure of license instead of notification, effectively depriving Egyptian associations from the fruits of international cooperation.

7) Article 17 sets the approval of the minister of social affairs as a prior condition for an association to accept foreign financial support without specifying a definite period during which the minister should decide. This provision implies that the government can restrict the activities of any association by depriving it from international financial resources. Moreover, the same article provides that associations must obtain a prior approval from the administration to raise funds or donations from local sources.

8) Article 42 provides for seven conditions by virtue of which the administration has the right to disperse an association, while previous laws, such as the law 32/1964, provides for only four conditions.

9) Article 64 on the general federation of public associations provides that the President has the right to appoint a third of the federation's board, effectively making the federation semi-governmental.

10) Article 75 adopts severe punishments in case of violating the law, including imprisonment and dispersion of the association. Such exaggerated punishments are obviously meant to terrorize civil society activists.

Part I

To Egyptian Legislators General Principles!!

1. The Subcommittee for Justice, Legislation, and Administrative Development at the Specialized National Councils

- The principles of the subcommittee guarantee the right to form public associations, federations and organizations as a basic human right. Legislators should take into consideration the provisions of articles 55/56 of the Constitution and the principles set forth by the Higher Constitutional Court. Above all, legislators should guarantee the democratic right to form associations and federations with the general assembly's full control over the policies and internal regulations of these associations. The administration should be prevented from any right to restrict associations' activities or interfere in their policies and internal regulations.
- Proposed laws should not provide for administrative restrictions or bureaucratic obstacles, and should include only the minimal level of incrimination and penal procedures.
- Associations and NGOs should be guaranteed the right to undertake charity and social activities without restrictions over the founders of an association or its membership.
- Donations to public associations should be encouraged by tax-exemptions.
- Regional activities of associations should not be restricted unless for a pressing public interest and through court action.
- Articles abrogated from the Egyptian civil law (54 to 80) should form the basis for the regulations of the proposed law on associations.

The Principles of Amman Workshop (9/10 May 1999)

On 9/10 May 1999, Arab human rights activists held a workshop in Amman on the 'organization framework for public associations in the Arab World'. The workshop's activities resulted in the declaration of principles on the organization of associations in the Arab world, which emphasized the central role of these associations in cooperation with the State's various departments. The declaration also criticized the tight controls and restrictions imposed on associations in Arab countries. The recommendations of the declaration includes the following principles:

- The right of all citizens to form, join, or leave an association, and the State's obligation to cooperate with civil society activists in the formation of an organization framework, which encourages the freedom of associations and the democratic practice.
- The unrestricted right to form associations without prior license or permission and only simple and easy procedures should be imposed.
- Founders of an association should have the right to decide and amend its regulations without interference.
- The administration should not be allowed to interfere in the association's meetings, elections, and/or activities.
- Associations should be guaranteed the right to raise their financial resources through various means, including subscriptions, donations, grants; from local and/or international sources.
- Tax exemption for public associations' activities.
- Supervision over the association's activities should be conducted by:

1) membership (in all its affairs);
2) public opinion and society (in case of a related public interest)
3) normal courts;
4) the administrative department (only over financial regulations);
5) donors (on the specific amount of funds they grant). As for the penal procedures, the declaration adhered to the principle of proportionality to specific violations, rejecting all forms of criminal punishments on civil activity and activists.

- Associations are not to be dissolved by administrative actions. Instead, an association can be dissolved by a willful decision of its membership, or by a final court action, and only in specifically determined cases.

3- Principles Established by Egypt's Higher Constitutional Court

Historically, Egyptian judiciary has been the protective bulwark of public rights and freedoms, against recurrent deviations by the executive and legislative authorities. The establishment of the Higher Constitutional Court in 1979 marked a further step forward in the domain of judicial protection of citizens' rights and freedoms. The HCC has elaborated three general principles for legislators regulating citizens' practice of public freedoms and rights: a) under no condition should regulations imposed by legislators lead to the confiscation or restriction of public rights and freedoms; b) the intervention of legislators should stick to the principle of equal opportunity and the basic principle of protecting public freedoms; c) legislators should adhere to the regulations stipulated by the Constitutions.

4- Principles for the Freedom of Association

(Cited in the HCC ruling against Egypt's law on association no.153/1999)

1. Public rights and freedoms are protected by Constitutional provisions

"The Constitution imposes restrictions on both the executive and legislative departments so that to guarantee full protection of public rights and freedoms, above all the freedom of association."

2. Civil society organizations act as a fundamental partner of the State:

"Civil society organizations constitute the link between individuals and the state. Through the promotion of democratic practice and public awareness, public associations participate in the efforts of public mobilization for socioeconomic development."

3. **Administrative bodies** are not permitted to interfere in the activities of public associations.
4. **The freedom to form associations constitutes** a peace and parcel of personal freedom.
5. **The right to form associations** intersects with the constitutional freedom of expression.
6. **Only in accordance to the Constitutional provisions** may the right to form associations be restricted.

"As the right to form associations intersects with the freedom of expression and constitutes a fundamental aspect of the personal freedom protected by the Constitution, the freedom of association may not be restricted beyond the minimum requirements set forth by the Constitution."

7. **Restriction of the freedom of association** undermines the constitutional freedom of expression.
8. **The freedom of association is a basic pillar** of democratic governance:

"Dissipation of the freedom of association undermines the basis of the democratic popular regime. The freedom of association, therefore, should be restricted only by a law provision and within the limits acceptable in democratic countries.

5- Principles for the Freedom of Associations

(Cited in the HCC's ruling against paragraph (d) of article 36 of the Egyptian Law on Trade Unions no.35/1976)

- Formation of civil society organizations only requires notification of the administration, without the need to obtain a license.
- Individuals have the right to join associations and unions regardless of belief or opinion.
- Supervision over the association's or the union's activity is the exclusive right of its members, without any intervention by the administrative departments.
- "Activities of trade unions should not be restricted, and the administration may not interfere in its formation or daily practice of trade unions in order to defend the democratic interests of their members."
- Freedom of association is necessary to guarantee the free practice of other public freedoms.
- "The freedom of speech, belief, and the press cannot be fully protected without the freedom of association, which brings together the efforts of interest groups. The defense of such interests through association enriches the democratic practice and contributes to the social, economic and political development."

Part II

Comments of Egypt's intellectual community

"Insistence on the consolidation of civil society organizations cannot be regarded as the demand of extremists. It is the demand of the main forces of Egypt's civil society".

Mohammed Sayed Ahmad; Al-Ahaly newspaper, 26 May 1999.

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"Opponents of the law insist that it reasserts the dominant role of the administration and the security department over public activity. Articles such as no.7, 8, 16, 17, 42, and 71 deprive public associations of undertaking any political or trade union activity, while every public activity inevitably intersects with political and union activities in one way or another".

Hussein Abdel Razeq; Al-Ahaly newspaper, 26 May1999.

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"Public associations constitute the party that is most concerned of the promulgation of the new law in a way that does not contradict the Constitution. Will the government give them the opportunity to discuss its provisions? Or would it issue the new law without adequate discussions, taking public associations by surprise?"

Senior Justice- Saeid al-Gamal; Al-Wafd, 27 May 1999.

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"The new law deals Egypt's civil society organizations the deathblow, as public associations are prohibited to undertake political and trade union activities. The law also deprives them of accepting foreign finance while denying them any access to local financial support. The law does not only restrict their activities, but also deprives them of their necessary resources."

Magdy Mahanna; Al-Wafd, 28 May 1999.

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"The promulgation of the new law on associations is an unfavorable premonition at the start of the President's fourth term in office. The main purpose of this law is the destruction of human rights organizations, with the administration's interfering in their day-to-day activities".

Mohammed Abdel Quddus; Al-Shaab, 8 June 1999.

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"The ruling of the Higher Constitutional Court, invalidating the law on public associations adds to the confusion, which marred public activity during the last few months. State departments, however, could have avoided causing such confusion had they thoroughly examined draft laws before passing them through the People's Assembly"

Galal Duwaidar; Al-Akhbar, 5 June 2000.

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Part III

"For a more democratic and just law on public activity"

(A workshop organized by the APHRA and the Coordination Committee on Public Activity on 3-4 October 2000)

'The civil sector has developed from a mere agent for development to a third partner with the State and the private sector. International events witness the effective presence of the civil sector. Therefore, laws governing this sector should be reformulated to parallel the sector's expansive requirements. In this context, the law on public associations should give a momentum for social development based on the freedom of public activity.' **Mona Zulfakkar**, *Political & Cultural Reflections of the Law.*

'Egypt's Constitution prevents the executive and legislative bodies from violating public rights and freedoms. That is why the law on public associations no.153/1999 is unconstitutional as it imposes severe restrictions on the freedom of association and peaceful assembly. The problem is that the government can reissue the same law under a new title.' **Mahmoud Gabr**, *A Shortsighted View of Public Activity.*

'The law on associations no.153/1999 gives the administration the right to interfere in the association's board elections, and to deprive associations of the right to join any international or regional federations, in addition to many other restrictions, particularly on finance.' **Adel Abu Zahra,** *Remarks on the Public Association's Law.*

'Civil society organizations in Egypt can be described in mere quantitative terms, as they are deprived of the necessary relative independence from the State. The overall picture of the conditions now prevailing in Egypt can be termed as a 'Political Opening' *(Infitah Syassi)* in which limited freedom is granted for citizens on the condition that the government maintains its tight control over the whole political process by the imposition of authoritative laws.' **Huwaida Adly**, *The State's Control over Public Activity.*

'Public activity has an inherent political aspect. This political aspect, however, is not based on party activities, but on popular and community self-organization. It helps citizens to possess the actual capacity to enjoy their public rights.'
Hany Shukrallah, *Duties of Civil Society.*

'The role played by public and human rights organizations has effectively contributed to the political transformation in Egypt. This role encouraged political parties to include the principles of human rights in their political platforms. The sector, however, needs to enhance its relation with ordinary citizens and develop new mechanisms for wider activity.' **Nabil Abdel Fattah**, *The Role of Civil Society Organizations*

'The Egyptian State does not respect the will of its citizens. The meetings, organized to discuss the law with representatives from public associations, were hypocritical. It is necessary to apply pressures on the State, pushing it to change its established authoritative policies.' **Ahmad Abdallah,** *The State's Attitude towards Associations.*

2- Amendments Requested by Public Associations

* The right to form associations is an inalienable right of citizens. We have the right to work in a democratic environment.' **Ratiba Wassef**

* We need a democratic law that does not impose authoritative restrictions on associations.' **Fatema Abdel Hamid Osman**

* The law on public associations should conform to the spirit of the age. Many associations in the world join international networks and federations without the need for a special license. Control of finance should be achieved through a democratic process for accountability. Transparency and democracy is the spirit of our age.' **Zaki Khury**

'The aim of development is to improve the quality of social life. Therefore, the most downtrodden people must play a larger role in the process of development. The controversy over the right of associations to undertake political activities is consequently artificial. Meanwhile, the problem with foreign financial support is only a way to impose more controls over human rights organizations.' **Emad Seyam**

'The experts, who participated in the formulation committee have been disappointed by the government's neglecting of their recommendations.' **Azza Solayman**

3- Comments on the participants remarks on the campaign for a new democratic law

Participants in the workshop asserted in a questionnaire prepared by the APHRA that the law violates the minimum level of rights and democratic guarantees. They criticized the fact that activists are excluded from taking any part in the formulation of the law. The despotic structure of Egypt's political system was the main reason behind the failure of elaborating a democratic law on associations.

4-The Workshop's Recommendations

1. Adequate discussion of the new law with activists and political figures.
2. A wider concept for public activity should be the basis for the new law provisions.
3. Adoption of the notification principle as against the license.
4. Non-interference in the associations' activities.
5. Removing restrictions over the associations' internal elections or regulations.
6. The competence of the Administrative Court for settling disputes.
7. An association may only be dissolved upon a final court ruling.
8. Associations may accept funds to support their activities given they indicate the sources of finance and ways of expenditure.
9. Abolishing of any criminal penalties on the associations' activities.
10. Freedom to form regional and other federations.
11. Elaborating a code of ethics for Arab public associations.

5- The Press Campaign against the Law

Various newspapers and publications were interested to cover the workshop's activities, including ***Al-Osbo, Al-Qahera, Al-Wafd, and Al-Ahrar.***

APHRA also issued a special newsletter entitled ***'Civil Society 2000'*** on the activities of the workshop. The newsletter found a great audience among the Arab and Egyptian press, including ***Al-Wafd, Al-Osbo, and al-Khartoum***.

Part IV

APHRA's position towards the Law on Public Associations

The Program started a campaign for a democratic law on public associations in August 2000. In the context of this campaign, APHRA organized the aforementioned workshop on 3-4 October. APHRA also took part in the various discussions aroused by the various draft laws and the statements of State officials on public activity. The Program also criticized many amendments suggested by State officials, which sought to reproduce the same restrictions stipulated in the previous law, rejected by the Constitutional Court.

The coordination committee for public activity, in which the APHRA plays a prominent role, urged writers and civil society organizations to join the campaign for a more democratic and just law.

The APHRA also sent an appeal to the Egyptian authorities urging them to take the criticisms against the previous law, dismissed by the HCC, in consideration to avoid all legislative flaws in the new one.

APHRA also informed the President and members of the People's Assembly of the recommendations reached by the workshop for a more democratic law on public associations.

APHRA's position against the Law on Public Associations No.153/1999

The Program sent an appeal to the President and the People's Assembly urging them to discuss the draft with public activists, and to follow the guidelines set forth by international human rights conventions.

After the ratification of the above-mentioned law, the Program sent an open message to the President and the People's Assembly indicating that the law represented a retreat from the democratic transformation. The message also urged them to revise the law in light of the international standards for human rights and the Egyptian Constitution.

Part V

The Position of Human Rights Organization towards the Law

- Egyptian Organizations

'It is time to change the government's policies and to undertake a comprehensive political reform for a genuine democratic transformation in Egypt.'Research &Resource Center for Human Rights.

'We express our protest and deep concern over the way by which the government passed the new law on public association without adequate discussion with public associations.' The Forum for the Promotion of Civil Society.

'We reject the law on public association because of its flagrant contradiction with the stipulations the Egyptian Constitution. We unanimously agree on the necessity the joint action of the Coordination Committee and representatives of human rights organizations to pressurize the government for a reconsideration of the law.' Recommendations of the Party Coordination Committee and public activity representatives in a joint meeting.

'The draft law took us by surprise as it was totally different from the draft discussed the Minister of Social Affaires.' From the statement of public activity representatives and members of the formulation committee, published on 24 May 1999.

'It is obvious that the aim of the government from issuing this law is to eliminate the possibility of forming associations under the Civil Law, which human rights organizations used to avoid the restrictions imposed by the Ministry of Social Affairs.' The Land Center for Human Rights.

'The People's Assembly ratified the law on public associations without adequate discussion, indicating the government's insistence to pass the law under various claims, such as the protection of national security.' The Egyptian Organization for Human Rights.

- Arab Organizations:

'The law on public associations gives the administrative extensive powers to eliminate the right to form associations, enhancing the severe restrictions imposed on civil society organizations in Egypt.' The Arab Organization for Human Rights.

'Egyptian human rights organizations should partake in a discussion over draft laws concerning the organization of public activity.' The Moroccan Association for Human Rights.

'We condemn Egypt's law on associations and express our full support for the Egyptian organizations against this law. Tunisian organizations had to face the same restrictive policies at the beginning of the 1990s in defense for human rights.' The National Counsel for Freedoms in Tunisia.

'We support human rights organizations in Egypt in their struggle for public freedoms and democracy against various restrictive laws imposed by the government.' The Yemeni Organization for Human Rights and Democratic Freedoms.

- International Organizations' Support

Amnesty International expressed concern over some restrictive provisions in the new law, including the regulations of the NGOs' international relations, the regulations of internal elections, and the dispersion of associations.

Human Rights Watch sent an open letter to President Mubarak, expressing concern over the restrictive stipulations of the draft law, which gives the administration extensive powers over associations and their activities. The letter criticized the severe penalties against violation of the law rules as well as the administration's intervention in every detail of the associations' activities and finance.

Mary Robinson from the UN Commission for Human Rights pointed out that the law provisions were very flexible and vague to allow for widely different interpretations.

An Appeal to President Hosni Mubarak!!

Mr. President,

We would like to send you the recommendations of the workshop organized by the Arab Program for Human Rights' Activists under the slogan of 'for a more just and democratic law on public activity' in October 2000. Representatives of four public associations and twelve human rights' organizations attended the discussions, along with representatives from the regional federation, university professors, members of the formulation committee of the law, and members of the People's Assembly.

In view of the significant position of public activity, we hope that the new law on associations takes into consideration the recommendations of the workshop, which express the real aspirations of public activists.

The Arab Program for Human Rights Activists

" For a more democratic law on associations"

The letter sent by APHRA to members of the People's Assembly

Dear Sirs,

The Arab Program for Human Rights Activists has organized a workshop for a more democratic law on public activity on 3-4 October 2000. Representatives of four public associations and twelve human rights' organizations attended the discussions, along with representatives from the regional federation, university professors, members of the formulation committee of the law, and members of the People's Assembly.

Discussions were concentrated on the need for model standards for the law on associations to avoid the flaws of the law no.153/1999, dismissed by the Constitutional Court.

In view of the significant position of public activity, we hope that the new law on associations takes into consideration the recommendations of the workshop, which express the real aspirations of public activists.

Egyptian public associations work under a state of confusion as a result of the absence of any legal framework governing the public activity, particularly after the HCC dismissed the aforementioned law as unconstitutional.

Therefore, we hope that members of the People's Assembly pay more attention to the promulgation of a more democratic law that protects the freedom and rights of public associations.

The Arab Program for Human Rights' Activists